



UNIVERSITY OF TORONTO
FACULTY OF LAW

INTERNATIONAL ENVIRONMENTAL LAW

VOLUME II

Professor Jutta Brunnée

STORAGE

K
3583.3
.B78
2012
v.2
c.1

Winter 2012

BORA LASKIN LAW LIBRARY

DEC 15 2011


FACULTY OF LAW
UNIVERSITY OF TORONTO

INTERNATIONAL ENVIRONMENTAL LAW

VOLUME II

Professor Jutta Brunnée

Winter 2012



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

<https://archive.org/details/internationalenv02brun>

INTERNATIONAL ENVIRONMENTAL LAW

Professor Jutta Brunnée

Table of Contents

I. Introduction: Course Themes

UNEP, <i>Global Environmental Outlook - GEO-4</i> , Ch. 1 “Environment for Development” (pp. 6-34); (Valetta, Malta: Progress Press, 2007).....	1
D. Bodansky, J. Brunnée & E. Hey, “International Environmental Law: Mapping the Field,” in Bodansky, Brunnée & Hey, eds., <i>Oxford Handbook of International Environmental Law</i> (Oxford: OUP, 2007) 1-25.....	30
P. Malanczuk, <i>Akehurst’s Modern Introduction to International Law</i> , 7 th rev. ed. (London: Routledge, 1997), 1-8.....	43
R. Higgins, <i>Problems and Process, International Law and How We Use It</i> (Oxford: Clarendon Press, 1995), chapter 1 at 1-16	48
Article 38, <i>Statute of the International Court of Justice</i>	57
K. W. Danish, “International Relations Theory,” in Bodansky, Brunnée & Hey, eds., <i>Oxford Handbook of International Environmental Law</i> (Oxford: OUP, 2007) 206-230.....	58
K. Mickelson, “Critical Approaches,” in Bodansky, Brunnée & Hey, eds., <i>Oxford Handbook of International Environmental Law</i> (Oxford: OUP, 2007) 262-289.....	71

II. Principles of International Environmental Law

<i>Trail Smelter Case (United States v. Canada)</i> (1949) 3 U.N. Rep. Int'l Arb. Awards 1905, 1908, 1938, 1940, 1945, 1962, 1963-1966.....	85
<i>Corfu Channel (U.K. v. Albania)</i> (1949) I.C.J. Rep. 4, 22-23.....	88
<i>Lake Lanoux (France v. Spain)</i> (1957) I.L.R. 101, 127-129, 140-141.....	89
<i>Nuclear Tests (Australia v. France) Interim Protection, Order of June 22, 1973</i> I.C.J. Rep. 99, 99-106.....	91
International Court of Justice, <i>Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons</i> , 8 July 1996, paras. 27-37, 105.....	93

International Court of Justice, <i>Case Concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia)</i> , 25 September 1997: summary of facts, paras. 135-147	97
International Court of Justice, <i>Pulp Mills on the River Uruguay (Argentina/Uruguay)</i> , 20 April 2010: summary of facts, summary of paras. 67-158, summary of paras. 169-202, paras. 203-205	103
WTO, <i>EC Measures Concerning Meat and Meat Products (Hormones)</i> , WTO Doc. WT/DS26/AB/R, WT/DS48/AB/R [reproduced in Part V, below]	
ITLOS, <i>Southern Bluefin Tuna cases (New Zealand v. Japan; Australia v. Japan)</i> , ITLOS/Press 28 (27 August 1999)	115
ITLOS, <i>Southern Bluefin Tuna cases (New Zealand v. Japan; Australia v. Japan)</i> , Provisional Measures, (1999) I.T.L.O.S. nos. 3&4, paras. 77-79.....	118
ITLOS, <i>Southern Bluefin Tuna cases (New Zealand v. Japan; Australia v. Japan)</i> , Provisional Measures, (1999) I.T.L.O.S. nos. 3&4, Separate Opinions of Judge Laing (paras. 12-19), and Judge Treves (paras. 6-9).....	120
Spraytech (Société d'arrosage) v. Hudson (Town), 2001 SCC 40.....	125
<i>Stockholm Declaration on the Human Environment</i> , (1972) 11 I.L.M. 1416.....	127
<i>Rio Declaration on Environment and Development</i> , (1992) 31 I.L.M. 876.....	130
Johannesburg Declaration on Sustainable Development, A/CONF.199/20 (2002), p. 1-5.....	135
G. Handl, "Environmental Security and Global Change: The Challenge to International Law" (1990) 1 <i>Y.B. Int'l Env. L.</i> 20-33.....	140
U. Beyerlin, "Bridging the North-South Divide in International Environmental Law," (2006) 66 <i>ZaöRV</i> 259, at 259-288.....	145
K. Mickelson, "South, North, International Environmental Law and International Environmental Lawyers" (2001) [reproduced in Part IV below].	
Susan Biniaz, "Common But Differentiated Responsibility - Remarks," in American Society of International Law, <i>Proceedings of the Annual Meeting</i> (2002), 359-363 [reproduced in Part IV, below].	
J. Brunnée, "A Conceptual Framework for an International Forests Convention: Customary Law and Emerging Principles" in Canadian Council on International Law, <i>Global Forests and International Environmental Law</i> at 55-62 [reproduced in Part VI, below].	

III. Transboundary Pollution: Acid Rain

- J. Regens & R. Rycroft, *The Acid Rain Controversy* (Pittsburgh: University of Pittsburgh Press, 1988) at 35-37, 39, 48-51.....161
- UNEP, *Global Environmental Outlook - GEO-4*, Ch. 2 “Atmosphere” (Valetta, Malta: Progress Press, 2007), pp. 52-59.....165
- M. Mittelstaedt, “Acid rain warning sounded,” *The Globe and Mail* (26 March 2001) A.7.....173
- Commission for Environmental Cooperation (CEC), “North American Power Plant Emissions – 2002 Emissions,” (CEC, 2004), pp. 12-17.....174
- Matthew Preusch, “Pollution Dispute in Northwest Straddles the Border,” *New York Times*, March 20, 2004 A.8.....182
- Teck Cominco, “U.S. Supreme Court Denies Teck Cominco's Petition for Review and Reversal” (Media Release 8-01-TC)184
- ECE Convention on Long-Range Transboundary Air Pollution* (1979).....185
- Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on the Reduction of Sulfur Emissions or Their Transboundary Fluxes by at Least 30 Percent* (1985).....196
- Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on Further Reduction of Sulphur Emissions* (1994).....198
- Convention on Long-Range Transboundary Air Pollution (Executive Body), Decision 1997/2 Concerning the Implementation Committee, Its Structure and Functions and Procedures for Review of Compliance.....205
- Questions for Treaty Analysis.....208
- T. Gehring, “Treaty-Making and Treaty Evolution,” in Bodansky, Brunnée & Hey, eds., *Oxford Handbook of International Environmental Law* (Oxford: OUP, 2007) 467-497.....210
- G. Downs *et al.*, “The Transformational Model of International Regime Design: Triumph of Hope or Experience?” (2000) 38 Col. J. of Transnt'l Law 465at 465, 469-476.....227

IV. Global Commons: Ozone Depletion

- M. Lemonick, “The Ozone Vanishes” *TIME* (17 February 1992) 40.....232

UNEP, <i>Global Environmental Outlook - GEO-4</i> , Ch. 2 “Atmosphere” (Valetta, Malta: Progress Press, 2007), pp. 68-71	235
D. Albritton, “Dealing with Uncertainty: A Challenge for Science” in W. Land, ed., <i>The Ozone Treaties and Their Influence on the Building of International Environmental Regimes</i> , Austrian Federal Ministry for Foreign Affairs 37-42.....	239
F. Stewart, “The Role of the South in a Chaotic World” in A. Carty & H. Singer, eds., <i>Conflict and Change in the 1990s: Ethics, Laws and Institutions</i> (Houndsmills, Hampshire: Macmillan, 1993).....	242
K. Mickelson, “South, North, International Environmental Law and International Environmental Lawyers” (2001) pp. 52-54, 69-77.....	251
Susan Biniaz, “Common But Differentiated Responsibility - Remarks,” in American Society of International Law, <i>Proceedings of the Annual Meeting</i> (2002), 359-363.....	258
Global Commons: Exploring the Ozone Regime.....	262
<i>Vienna Convention for the Protection of the Ozone Layer</i> (1985).....	263
Montreal Protocol on Substances that Deplete the Ozone Layer (1987) as adjusted and amended in 1990, 1992, & 1995.....	272
Amendments to Montreal Protocol.....	292
Adjustments to Montreal Protocol.....	293

V. Cross-Cutting Issue: Trade and Environment

(1994) Agreement Establishing the World Trade Organization.....	294
United States - Restrictions on Imports of Tuna DS21/R - 39S/155 (1991).....	298
United States - Restrictions on Imports of Tuna DS29/R (1994).....	304
United States - Import Prohibition of Certain Shrimp and Shrimp Products WT/DS58/AB/RW (2001).....	314
T.J. Schoenbaum, “The Decision in the <i>Shrimp-Turtle</i> Case” (1998) 9 Yb. of Int’l Env. Law 36-39.....	325
J. Atik, “Two Hopeful Readings of <i>Shrimp-Turtle</i> ” (1998) 9 Yb. Of Int’l Env. Law 6-12.....	327

D. Brack, "The <i>Shrimp-Turtle</i> Case: Implications for the Multilateral Environmental Agreement- World Trade Organization Debate" (1998) 9 Yb. Of Int'l Env. Law 13-19	330
Article 30, <i>Vienna Convention on the Law of Treaties</i>	335
WTO, <i>EC Measures Concerning Meat and Meat Products (Hormones)</i> , WTO Doc. WT/DS26/AB/R, WT/DS48/AB/R.....	336
ITLOS, <i>Southern Bluefin Tuna</i> cases (<i>New Zealand v. Japan; Australia v. Japan</i>), ITLOS/Press 28 (27 August 1999) [reproduced in Part II above]	
ITLOS, <i>Southern Bluefin Tuna</i> cases (<i>New Zealand v. Japan; Australia v. Japan</i>), Provisional Measures, (1999) I.T.L.O.S. nos. 3&4, paras. 77-79 [reproduced in Part II above]	
ITLOS, <i>Southern Bluefin Tuna</i> cases (<i>New Zealand v. Japan; Australia v. Japan</i>), Provisional Measures, (1999) I.T.L.O.S. nos. 3&4, Separate Opinions of Judge Laing (paras. 12-19), and Judge Treves (paras. 6-9) [reproduced in Part II above]	
<i>Cartagena Protocol on Biosafety to the Convention on Biological Diversity</i>	338
P. Sands, <i>Principles of International Environmental Law</i> , 2 nd Ed. (Cambridge: Cambridge University Press, 2003), Ch. 12 "Hazardous Substances and Activities," pp. 653-658	341
E. Masood, "Against the Grain" <i>New Scientist</i> (14 January 2000)	345
N. Kalaitzandonakes, "Cartagena Protocol: A New Trade Barrier?" (2006) <i>Regulation</i> 18.....	347

VI. Conservation of Natural Resources: Forests

UNEP, <i>Global Environmental Outlook - GEO-4</i> , Ch. 3 "Land" (Valetta, Malta: Progress Press, 2007), pp. 88-91.....	355
U. Beyerlin, "Bridging the North-South Divide in International Environmental Law," (2006) 66 <i>ZaöRV</i> 259, at 259-288 [reproduced in Part II, above].	
D. Tarlock, "Exclusive Sovereignty versus Sustainable Development of a Shared Resource: The Dilemma of Latin American Rainforest Management" (1997) 32 <i>Texas Intl L. J.</i> 37-66.....	359
J. Brunnée, "A Conceptual Framework for an International Forests Convention: Customary Law and Emerging Principles" in Canadian Council on International Law, <i>Global Forests and International Environmental Law</i> at 55-62.....	373
P. Sands, <i>Principles of International Environmental Law</i> , 2 nd Ed. (Cambridge: Cambridge University Press, 2003), Ch. 11 "Biological Diversity," pp. 545-551.....	375

United Nations Conference on Environment and Development, <i>Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests</i>	379
Helsinki Forest Meeting, <i>General Declaration: Conclusions</i> (1993).....	386
Ministerial Conference on the Protection of Forests in Europe, <i>General Guidelines for the Sustainable Management of Forests in Europe</i> , Resolutions H1, H3 and H4.....	390
Deborah S. Davenport and Peter Wood, “Finding the Way Forward for the International Arrangement on Forests: UNFF-5, -6, and -7” (2006) 15:3 RECIEL 316.....	398
Summary of the Seventh Session of the United Nations Forum on Forests: 16–27 April 2007, <i>Earth Negotiations Bulletin</i> , Vol. 13 No. 162, 30 April 2007, pp. 1-19.....	409

VII. Global Commons: Climate Change

UNEP, <i>Global Environmental Outlook - GEO-4</i> , Ch. 2 “Atmosphere” (Valetta, Malta: Progress Press, 2007), pp. 59-68.....	428
David A. King, “Climate Change Science: Adapt, Mitigate or Ignore?” (2004) 303 <i>Science</i> , pp.176-177 (January 9 2004).....	438
UK Treasury, <i>Stern Review: The Economics of Climate Change</i> , Summary of Conclusions (30 Oct 2006),	442
<i>Tuvalu, Climate Change and International Law</i> . Excerpts from: BBC News Online, “Tiny Pacific nation takes on Australia,” (Monday, 4 March, 2002); Intergovernmental Panel on Climate Change, <i>Climate Change 2001: Impacts, Adaptation and Vulnerability</i> (Section 19.3.4.1.); AFP, “Tuvalu showing no evidence of sea-level rise,” (March 27, 2002); and Kalinga Seneviratne, “Tuvalu Steps Up Threat to Sue Australia, U.S.,” (September 8, 2002 - IPS/PINA Nius Online).....	446
J.W. Anderson, “The UN Framework Convention on Climate Change” in <i>The Weathervane Guide to Climate Policy</i>	450
<i>United Nations Framework Convention on Climate Change</i> , available at http://www.unfccc.de/resource/conv/conv.html	452
J.W. Anderson, “A Brief History of the Kyoto Protocol” in <i>The Weathervane Guide to Climate Policy</i>	467
J.W. Anderson, “Overview of the Kyoto Protocol” in <i>The Weathervane Guide to Climate Policy</i>	473

<i>Kyoto Protocol to the United Nations Framework Convention on Climate Change</i> , available at http://www.unfccc.de/resource/docs/convkp/kpeng.html	475
Calculating Compliance with Assigned Amounts (targets).....	489
L. Rajamani, “China and India on Climate Change and Development: A Stance That is Legitimate but Not Sagacious?”, in S. Bernstein, J. Brunnée, D. G. Duff & A. J. Green, eds., <i>A Globally Integrated Climate Policy for Canada</i> (Toronto: University of Toronto Press, 2008) 104.....	490
UNFCCC, Bali Action Plan, FCCC/CP/2007/6/Add.1 (18 March 2008), Decision 1/CP 13, pp. 3-7.....	502
Gita Parihar, “Waving or drowning?: The legal impacts of the Cancun climate negotiations,” (2011) 1 <i>ELNI Review</i> 21	507

VIII. Cross-Cutting Issue: Responsibility, Liability, Compliance and Enforcement

Jacqueline Peel, “New State Responsibility Rules and Compliance with Multilateral Environmental Obligations: Some Case Studies of How the New Rules Might Apply in the International Environmental Context,” (2001) 10 <i>RECIEL</i> 82-87, 96-97.....	513
ILC, <i>Report on the Work of its 52nd Session</i> , A/CN.4/L.602, excerpts.....	521
J. Brunnée, “Of Sense and Sensibility: International Liability Regimes as a Tool for Environmental Protection,” (2004) 53/2 <i>International & Comparative Law Quarterly</i> 351- 367.....	528
UNCED Preparatory Committee, Decision 3/25, A/46/48, vol. II, <i>Criteria for Evaluating the Effectiveness of Existing Agreements or Instruments</i>	537
A. Handler Chayes, Abram Chayes and R.B. Mitchell, “Active Compliance Management in Environmental Treaties” in W. Land, ed., <i>Sustainable Development and International Law</i> (London: Kluwer, 1995) 75-89.....	1
G. Downs <i>et al.</i> , “Is the Good News About Compliance Good News About Cooperation?” in (1996) 50 <i>International Organization</i>	9
Jan Klabbers, “Compliance Procedures,” in Bodansky, Brunnée & Hey, eds., <i>Oxford Handbook of International Environmental Law</i> (Oxford: OUP, 2007), p. 997	14
Non-Compliance Procedures, <i>Montreal Protocol on Substances that Deplete the Ozone Layer</i>	20

G. Handl, "Compliance Control Mechanisms and International Environmental Obligations" (1997) 5 Tulane J Int'l & Comp L 29.....	23
Procedures and mechanisms on compliance under the Kyoto Protocol, FCCC/CP/2001/L.21.....	34
D. Bodansky, "Customary (And Not So Customary) International Environmental Law" (1995) 3 Indiana J. Global Leg. Studies 112-119.....	50